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JAMES BONINI, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BPI ENERGY, INC., a Nevada corporation, **Plaintiff,** **v.** **COLT LLC, a West Virginia limited liability company; AFC COAL PROPERTIES, INC., an Ohio corporation; AMERICAN PREMIER UNDERWRITERS, INC., a Pennsylvania corporation; and CENTRAL STATES COAL RESERVES OF ILLINOIS, LLC, a Delaware limited liability company,** **Defendants.**	**Case No. 1:06 CV 144** J. WATSON J. BLACK

COMPLAINT

Plaintiff BPI Energy, Inc. ("BPI"), for its Complaint against the Defendants, states as follows:

NATURE OF ACTION

1. This is an action for injunctive and declaratory relief, as well as for breach of contract and tortious interference with contractual relations, relating to BPI's right to produce coalbed methane gas under the terms of an amended Oil, Gas and Coalbed Methane Gas Lease (the "Methane Lease,") dated April 3, 2001, a copy of which is attached hereto as Exhibit A.* By its terms, the Methane Lease remains in effect for a minimum of five years (through April 3, 2006), and is automatically extended beyond that date if BPI satisfies two conditions relating to

* Although there were four amendments to the Methane Lease, none of those amendments are discussed in, or relevant to, this Complaint. Accordingly, the amendments have not been attached.

well locations and the payment of "aggregate royalties." Defendants have wrongfully obstructed and prevented BPI's performance of these conditions, thereby excusing them, but Defendants are nonetheless threatening to unilaterally terminate the Methane Lease as of April 3, 2006.

PARTIES, JURISDICTION AND VENUE

2. BPI is a corporation incorporated under the laws of the State of Nevada. BPI's principal place of business is located in the State of Illinois. BPI is engaged in the acquisition, exploration, development, production and sale of coalbed methane gas ("CBM"). All of BPI's operations involve CBM projects in the Illinois Basin; these operations are conducted from its office located in Marion, Illinois. BPI is the lessee under the Methane Lease.

3. Defendant, Colt LLC ("Colt"), is a limited liability company formed under the laws of the State of West Virginia. All of Colt's members are citizens of a state other than the States of Nevada or Illinois. Colt purports to be a "partial assignee" of the lessor's interest under the Methane Lease.

4. Defendant, Central States Coal Reserves of Illinois, LLC, formerly known as Peabody Development Land Holdings LLC ("Peabody"), is a limited liability company formed under the laws of the State of Delaware. All of Peabody's members are citizens of a state other than the States of Nevada or Illinois. Peabody purports to be a second "partial assignee" of the lessor's interest under the Methane Lease.

5. Defendant, AFC Coal Properties, Inc. ("AFC"), is a corporation incorporated under the laws of the State of Ohio. AFC's principal place of business is in a state other than the States of Nevada or Illinois. AFC is one of the two companies constituting the original lessor under the Methane Lease.

6. Defendant, American Premier Underwriters, Inc. ("American Premier"), is incorporated under the laws of the State of Pennsylvania. American Premier's principal place of

business is in a state other than the States of Nevada or Illinois. American Premier is the other company constituting the original lessor under the Methane Lease.

7. The matter in controversy in this lawsuit, exclusive of interest and costs, exceeds $75,000, and no Defendant is a citizen of the same state as Plaintiff. Therefore, this Court has diversity jurisdiction under 28 U.S.C. §1332.

8. Venue in this district is proper under 28 U.S.C. §1391. Furthermore, under Section 26 of the Methane Lease, the parties have selected this Court as a possible forum for this lawsuit:

> Any lawsuit, dispute, action or other proceeding (collectively, "Action") based on or arising out of or in connection with this Lease, whether in contract, tort or otherwise, . . . must be brought, maintained, and entered exclusively in the courts of Hamilton County, Ohio or in the Western Division of the United States District Court for the Southern District of Ohio; . . . Each party to this Lease (and their respective affiliates, successors and assigns) expressly and irrevocably submits to the jurisdiction of the courts of the State of Ohio and of the United States District Court for the Southern District of Ohio for the purpose of any such Action, . . . Each party to this Lease (and their respective affiliates) hereby expressly and irrevocably waives any defense or objection which it may now or hereafter have based on a claim of lack of personal jurisdiction or based on improper venue or based on the doctrine of forum non conveniens as to any such Action brought in any court referred to above.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

Coalbed Methane Gas

9. CBM is a form of natural gas generated during coal formation. Unlike natural gas produced from traditional wells, which contain hydrocarbons in varying amounts that need to be processed, CBM normally contains high quantities of methane, which is one of the purest forms of natural gas. CBM is normally pipeline-quality gas after a water-dehydration process, described in paragraph 13 below, is complete.

10. CBM exists in and around coal, which is found in large permeable seams. These seams, or "zones," exist as formations at differing depths underground. Zones have thicknesses ranging from 1 foot to over 9 feet. Because multiple zones may exist underneath any given point on the surface, CBM wells often penetrate and produce from more than one zone.

11. CBM—also known as "in-seam" coalbed methane gas—exists within the intact (unmined) portion of a coal seam. Another form of methane gas—coalmine methane gas, or "CMM"—exists as a free gas in abandoned coal mines, which are left behind once coal has been mined out of a seam. The Methane Lease refers to such mines (e.g., in Section 6) as "abandoned mineworks."

12. CBM is found within coal seams in four ways: (a) as free gas within the micropores (pores with a diameter of less than .0025 inch) and cleats (a set of natural fractures) of coal; (b) as dissolved gas in water within the coal; (c) as adsorbed gas held by molecular attraction on the surface of macerals (organic constituents that comprise the coal mass), micropores and cleats in the coal; and (d) as adsorbed gas within the molecular structure of the coal.

Drilling for CBM

13. In order to extract CBM, wells designed to produce both water and CBM (i.e., wells that have both water and gas lines) are drilled into coal seams. CBM is released from coal by pressure changes that occur when water is removed from coal. Accordingly, a new CBM well typically produces large amounts of water for the first few months it is in production. Then, as the water pressure in the coal formation falls, CBM flows more freely out of the coal, and methane gas can be produced in greater quantities.

14. BPI's plans contemplate using two drilling techniques for CBM production: vertical and horizontal. Vertical drilling involves drilling wells vertically through

multiple coal seams; horizontal drilling involves drilling wells from the surface and turning the wellbore horizontally through just one coal seam.

15. Horizontal wells typically produce higher volumes of CBM than vertical wells drilled into the same coal seam. Horizontal wells are designed to replace multiple vertical wells, resulting in lower capital expenditures and far less surface disruption.

16. After a well has been drilled, based on the type of well and the zones identified for production, additional steps are taken to ready the well to begin producing gas.

17. Both CBM and water are produced during production.

18. CBM travels from the well through a gathering system to a compressor station, where it is pressurized and excess water is removed. It is then transported through a tap into an interstate pipeline, where sales are recorded.

19. Water is pumped out of the well and into a gathering system that leads to a permitted disposal well, where it is reinjected into lower geological formations.

20. Both gas and water gathering systems consist of pipes called "flow lines."

21. Vertical CBM wells in the Illinois Basin typically remain productive for 20 to 30 years. Capital expenditures are generally recovered within 3½ to 4 years after completion; and 85% of the available gas is recovered within the first 8 years. After all the available CBM has been produced from a vertical well, it is normally "plugged"—i.e., the wellbore is filled with expandable cement to seal off all openings and restore the surface—then the well is abandoned.

The Delta Project

22. The Delta Project is BPI's name for its core CBM development and production project, which is being conducted under the Methane Lease on approximately 50,000

acres in southern Illinois, primarily in Williamson and Saline Counties, with limited acreage in Franklin County.

23. For reference in this Complaint, the Delta Project may be divided into four areas: the "Originally Drilled Acreage," the "Williamson County Acreage," the "Horizontal Drilling Acreage," and the "New Acreage." The Originally Drilled Acreage and the New Acreage are located in Saline County; the Williamson County Acreage and the Horizontal Drilling Acreage are located in Williamson County. BPI has no current CBM production in Franklin County.

24. There are two principal unmined coal seams in the Delta Project: the "Herrin No. 6" coal seam and the underlying "Springfield No. 5" coal seam. These seams are mainly located throughout the Horizontal Drilling Acreage and the northern two-thirds of the Williamson County Acreage.

25. Substantially all minable coal was removed from the Originally Drilled Acreage and the lower one-third of the Williamson County Acreage before the Methane Lease became effective in April, 2001. These areas contain a number of abandoned mineworks. BPI has drilled CMM wells capable of draining all of these mineworks, except for two abandoned mineworks in the Williamson County Acreage.

26. Extensive testing has led BPI to develop the Delta Project by drilling its vertical wells in a five-well diamond-shaped pattern. Under this concept, four outer wells, which form a diamond-like shape around a center well, create "positive interference," which has the effect of boosting the center well's gas production. As additional outer wells are placed into production, more wells become interior wells, and they benefit from the positive interference created by the newly drilled outer wells. This technique yields the maximum possible

production (for vertical wells) over a given area because the water drained by each outer well contributes to the depressurization of the entire area.

27. BPI's five-well drilling technique results in each additional active well producing greater quantities of CBM in increasingly shorter periods of time. Because the established CBM wells in a given area have already effectively begun to depressurize that area by the time an additional well is added, the dewatering period for each additional well is shorter than the dewatering period attributable to each established CBM well.

28. As of March 15, 2006, there were 81 producing CBM wells (i.e., excluding the CMM wells) in the Delta Project, all of which are located in the Originally Drilled Acreage and a small portion of the New Acreage. BPI's investment in the Delta Project exceeds $23 million.

The Methane Lease

29. On April 3, 2001, BPI and Methane Management, Inc. (an affiliate of BPI) (collectively, "Lessee"), jointly executed the Methane Lease with AFC and American Premier (collectively, "Lessor").

30. In early 2006, BPI merged with Methane Management, Inc. As a result, Methane Management, Inc., ceased to exist, BPI acquired all of Methane Management, Inc.'s assets and liabilities, and BPI became the sole Lessee under the Methane Lease.

31. Section 1(a) of the Methane Lease broadly defines BPI's leasehold interest (referred to in this Complaint as the "Leasehold") as the exclusive right to "any and all rights Lessor owns in Williamson, Saline and Franklin Counties, in the State of Illinois, either now known and described in [the attached exhibit] or determined in the future, related to oil, gas, coalbed methane gas, methane gas and other hydrocarbons other than coal ('Covered Hydrocarbons') . . . ."

32. Section 2 of the Methane Lease sets forth a "Primary Term," defined as the five-year period from the Lease Date—i.e., from April 3, 2001 to April 3, 2006. Under this section, the Primary Term is automatically extended for a potentially unlimited period of time after April 3, 2006, "as to a particular tract (as described in Section 6 below) so long as Covered Hydrocarbons are being produced from such tract providing a royalty payment of not less than One Dollar ($1.00) per acre in such tract per calendar month; provided, however, after the Primary Term, in the event the aggregate royalties do not exceed Forty-Two Thousand Dollars ($42,000) in any month, this Lease shall terminate."

33. Section 6 of the Methane Lease defines the meaning of tract (as used in Section 2) as (a) the 320 acres "capable of producing" gas that surround a well; and/or (b) the entire acreage of abandoned mineworks into which a well has been drilled:

> At the expiration of the Primary Term, this Lease shall terminate as to each tract which is not producing royalties as required in Section 2(a) . . . . For the purpose of this Section . . . a well which is primarily productive or capable of producing gas, coalbed methane gas or methane gas shall hold this Lease only as to the three hundred twenty (320) acres on which it is located with the applicable well located in the center thereof; and further provided that a well drilled into abandoned mineworks shall hold all areas in such mineworks that are drained by such well.

34. To the extent sufficient aggregate royalty payments are made under Section 2, the Methane Lease is automatically extended as follows: (a) as to certain acreage (described in Section 6) where BPI has drilled wells capable of producing gas; and/or (b) as to the entire acreage of the abandoned mineworks drained by a well.

35. Section 5(b) of the Methane Lease provides BPI, as Lessee, with complete control over its CBM operations: "Lessor shall have no responsibility for and no right to control or direct Lessee's performance. . . ." Additionally, "Lessor has no right or power . . . to propose

the drilling of a well, to determine the timing or sequence of drilling operations, to commence or shut down production, to take over operations, or to share in any operating decision whatsoever."

36. Section 14 of the Methane Lease governs the process by which BPI obtains approval from Lessor for proposed well locations: "Lessor shall have twenty (20) days after Lessee notifies Lessor of any proposed well . . . to deliver its written approval or disapproval. Approval will not be unreasonably withheld. If no such approval or disapproval is received during the twenty (20) day period, Lessor shall be deemed to have approved the location of the proposed well . . . and Lessee may proceed accordingly."

37. Section 25 of the Methane Lease governs assignments of the Lessor's interest: "[N]o assignment of Lessor's interest in this Lease shall enlarge the obligations or diminish the rights of Lessee. Lessor may transfer or assign ownership of the Land or the Lessor's interest in the Lease, but no such transfer or assignment shall be binding on the Lessee until the Lessee has been furnished with a copy of the written transfer or assignment."

38. Section 28 of the Methane Lease prohibits the Lessor from "unreasonably refus[ing] to execute in a timely manner ministerial documents (such as applications or drilling permits, approvals or consents) as may be reasonably necessary to give effect to a provision of this Lease."

Initial Course of Performance Under the Methane Lease

39. On April 3, 2001, when BPI and Lessor executed the Methane Lease, there were 14 CBM wells located in the Leasehold. These wells were drilled prior to BPI's acquisition of the Leasehold, and none of these wells were producing CBM as of April 3, 2001.

40. Between April 3, 2001 and May 2004, BPI's operations were focused on preparing the Leasehold for drilling operations. For example, during that period, BPI used some of the existing wells to establish the methane gas potential in the Leasehold.

41. In May 2004, BPI began drilling its first CBM wells on the Leasehold.

42. In January 2005, BPI activated its compressor station (which pressurizes methane gas for entry into the interstate pipeline), enabling BPI to realize its first sales from the Delta Project. BPI had 9 active wells at that point, all of which were vertical wells located in the Originally Drilled Acreage. Initial production from these wells was limited to single zone completions (i.e., only one zone out of the several zones through which the well extended was producing) as flow testing was finished. Prior to drilling its new wells, BPI had notified American Premier and AFC, as Lessor, of the proposed locations of all these wells, and Lessor approved these locations pursuant to the procedure set forth in Section 14.

43. Also in January 2005, BPI and Lessor agreed to share the costs of searching property records to determine whether any additional acreage included within the Leasehold existed. The granting clause of the Methane Lease, Section 1, had described this land as all of Lessor's rights in land located in Williamson, Saline and Franklin Counties as "determined in the future."

44. In March 2005, BPI informed Lessor that BPI had identified 6,573 additional acres of land under BPI's January 2005 agreement with Lessor to search for such land. For purposes of this Complaint, this land has been referred to as the "New Acreage."

45. In March 2005, BPI also provided Lessor with a map displaying the location of every actual and planned vertical CBM well (approximately 630) in the Leasehold. Lessor did not object to any of the proposed well locations; nor did Lessor request further information. Therefore, under Section 14 of the Methane Lease, the location of each and every proposed vertical well was deemed approved by Lessor, "and Lessee may proceed accordingly."

46. Also in March 2005, BPI executed a Technical Services Agreement (the "TSA") with an Australian company for the development of up to nine horizontal wells (i.e., three horizontal "pilots") in the Delta Project.

47. In April 2005, BPI presented its horizontal drilling plan to Lessor. As part of this presentation, BPI distributed slides proposing up to nine horizontal wells—consisting of three "pilots" of three horizontal wells each, including a map displaying the location of the first pilot (i.e., the first three horizontal wells) in the northwest part of the Horizontal Drilling Acreage. BPI also provided Lessor with a copy of the TSA. A horizontal well must intersect one vertical well (because gas and water from the horizontal well are produced through the vertical wellhead), and BPI advised Lessor that, in the near term, it planned to drill and test one such vertical well (i.e., Delta #H-1-A).

48. Lessor did not object to BPI's April 2005 horizontal well development plan; nor did Lessor request further information. Therefore, under Section 14 of the Methane Lease, BPI's horizontal development plan—including the location of the first three horizontal/vertical wells in the first pilot—was deemed approved by Lessor, "and Lessee may proceed accordingly."

49. Based on its development plan, BPI secured financing, equipment, drilling permits, and surface agreements, with its primary direction-of-development aimed at the thickest unmined coal seams in the Leasehold: the Williamson County Acreage and the Horizontal Drilling Acreage.

50. In June 2005, BPI drilled well Delta #H-1-A, a vertical well that BPI intended to be part of the first of the three horizontal wells in the initial pilot.

51. In June 2005, BPI also notified Lessor of an additional 200 acres included in the Leasehold. This raised the total additional acreage BPI had identified to over 6,700 acres. Through its ongoing efforts to identify additional acreage, BPI has identified approximately 7,200 acres as of the date of this Complaint.

52. On July 27, 2005, BPI notified the Illinois State Office of Mines and Minerals (the "Office of Mines and Minerals") that, through its title abstract work, BPI had determined that the land comprising the New Acreage was included within the Leasehold.

53. By August 31, 2005, BPI had 49 producing wells in the Delta Project and permits from the Illinois Department of Natural Resources to drill an additional 55 wells. Through that date, and for the 4-year-and-5-month period in which the Methane Lease had been in effect, BPI and Lessor had developed a close and cooperative relationship under the Methane Lease, with few disputes; BPI was never accused of any violations or breaches of the Lease, and BPI and Lessor had begun discussing an extension of the Primary Term.

Lessor's "Partial Assignments" of Its Interests in the Methane Lease to Colt and Peabody

54. On September 1, 2005, Lessor emailed BPI a letter dated August 2, 2005 that provided notice of a partial assignment of the Methane Lease to Colt, purportedly pursuant to Section 25 of the Methane Lease (the "First Notice Letter"). Attached hereto as Exhibit B is a true and correct copy of the First Notice Letter.

55. The partial assignment to Colt was made subject to a May 24, 2005 Purchase and Sale Agreement between Lessor and Colt, as is shown by the granting clause of the exhibit to the First Notice Letter (the "May 24, 2005 Purchase and Sale Agreement").

56. A copy of the May 24, 2005 Purchase and Sale Agreement was never provided to BPI, contrary to Section 25 of the Methane Lease, which required Lessor to furnish a

copy of the assignment documentation to BPI, or "no such transfer or assignment shall be binding on the Lessee."

57. On September 2, 2005, BPI received a letter dated September 1, 2005 from Lessor notifying BPI that a second partial assignment of the Methane Lease had been made to Peabody, also purportedly pursuant to Section 25 of the Methane Lease (the "Second Notice Letter"). Attached hereto as Exhibit C is a true and correct copy of the Second Notice Letter.

58. Paragraph 4 of the recitals section of an exhibit to the Second Notice Letter states that Lessor and Peabody are parties to "a Purchase and Sale Agreement dated as of June 1, 2005," under which Lessor is selling to Peabody certain assets relating to the partial assignment (the "June 1, 2005 Purchase and Sale Agreement").

59. A copy of the June 1, 2005 Purchase and Sale Agreement was never provided to BPI, contrary to Section 25 of the Methane Lease, which required Lessor to furnish a copy of the assignment documentation to BPI, or "no such transfer or assignment shall be binding on the Lessee."

60. As a consequence of the two partial assignments, Colt and Peabody each purported to have, as of September 1, 2005, a separate and divisible interest in the Leasehold, and the original Lessor claimed to have retained its own separate and divisible interest. Whereas for the first 4 years and 5 months of the Lease BPI dealt with a single Lessor, now it was being directed to deal with three separate Lessors, each claiming an interest in the Leasehold.

Colt Purports To Take Over as Partial Assignee

61. In a letter dated September 2, 2005, one day after BPI received the First Notice Letter, Colt declared that it was unilaterally rescinding the Lessor's prior approval of all nine horizontal wells (including the associated vertical wells), which BPI had proposed—and Lessor accepted—six months earlier. Colt wrote:

> Any horizontal wells, whether now existing or to be drilled in the future, are a breach of the Methane Lease. Colt hereby disapproves of each and every proposed horizontal well identified [previously].

Colt claimed that the horizontal wells were "a violation of the Methane Lease."

62. As noted in paragraph 47 of this Complaint, BPI provided Lessor with notice of the location of the first 3 horizontal wells. Absent receipt of Colt's September 2, 2005 letter, BPI would have given Colt notice of the proposed locations for the remaining 6 horizontal wells once drilling of the 3 initial horizontal wells was complete. Colt's September 2, 2005 letter, issued without any investigation whatsoever, came too late to constitute a disapproval under Section 14 of the Methane Lease, and, in the alternative, if timely, constitutes an "unreasonable" disapproval under that section. Thus, Colt obstructed BPI from executing its plan to complete the 9 horizontal wells; and, absent Colt's interference, BPI would have placed all 9 of these wells into production by April 3, 2006.

63. On September 26, 2005, Colt sent BPI another letter, which (a) claimed that BPI was guilty of "several breaches" of the Methane Lease; (b) demanded additional information from BPI about its existing and proposed wells; and (c) stated that BPI's prior notices of well locations "have been inadequate for Lessor's needs." Colt again claimed that "[a] horizontal well would be a clear violation of the Methane Lease." Colt also raised other issues, including but not limited to escrow, insurance, wellbore casing, and coal seam fracturing methods. Colt closed its letter by declaring that the negotiations for an extension of the Lease beyond the Primary Term, which had been ongoing between BPI and Lessor, were now over: "Colt is unwilling to discuss any renewal or extension of the Lease until such breaches are cured and adequate assurances that future breaches of [a] similar nature will not occur."

64. On October 4, 2005, Colt sent a letter to BPI demanding more information (not required under any provision of the Methane Lease), alleging that BPI had committed "several," "incurable," "clear and material" breaches of the Methane Lease, and directing that "wells should not be drilled until the appropriate time."

65. Ten days later, on October 14, 2005, Colt reiterated its objections to well locations, fracing, composite casing and horizontal drilling. Colt also accused BPI, once again, of committing several breaches of the Methane Lease; and, for the first time, Colt threatened to terminate the Lease in 30 days, pursuant to Section 18 of the Lease. At a minimum, Colt indicated that it would declare the Lease terminated at the end of the Primary Term: "[Y]ou ask about our willingness to extend the Methane Lease. Given the current defaults outlined above, do not count on such an extension."

66. BPI responded to all of Colt's accusatory letters by pointing out the initial course of performance of the original parties to the Methane Lease, noting how Colt had misinterpreted various provisions in the Lease, explaining that Colt was uninformed about certain basic underlying facts, objecting to Colt's purported position as a partial assignee, denying generally that BPI had in any way breached any of the provisions in the Methane Lease, and denying that Colt had any basis for terminating the Lease under Section 18.

BPI's Plan To Extend the Methane Lease Term

67. Prior to September 26, 2005, BPI and the original Lessor (AFC and American Premier) had been negotiating for an extension of the five-year term of the Methane Lease, and BPI had attempted to continue those negotiations with Colt.

68. After the September 26, 2005 letter from Colt advising BPI that "Colt is unwilling to discuss any renewal or extension of the Lease" until the "clear and material" breaches identified in that letter were cured, BPI shifted its focus to developing a strategy by

which it could still earn all or nearly all of the Delta Project acreage under Sections 2 and 6 of the Methane Lease. Those sections provided for an automatic extension of the Primary Term of the Lease, as to all acreage, if BPI satisfied the two express conditions relating to well locations and payment of "aggregate royalties."

69. To that end, BPI developed a plan for drilling more than 100 of the approximately 630 wells that had been previously proposed to —and approved by —Lessor in March and April 2005. Under this plan, these wells would have been drilled in the Horizontal Drilling Acreage, the Williamson County Acreage, and the New Acreage. Either spaced at 320-acre intervals centered around each well, or drilled into abandoned mineworks, these wells, once completed before April 3, 2006, would have satisfied the conditions in Sections 2 and 6 of the Methane Lease and thereby earned all or nearly all of the acreage in the Leasehold.

70. By the beginning of October 2005, BPI had available both the drilling and financial resources to place enough additional wells into production (or drill enough wells capable of production) by April 3, 2006, so as to earn all or nearly all the acreage in the Leasehold. Specifically, BPI had raised $30 million in capital pursuant to a "private placement" financing. BPI had also hired three well-drilling contractors with a combined 5 drilling rigs, each of which could have drilled between 4 and 5 finished wells per month. These resources expanded BPI's capacity to drill new wells in the Delta Project to a rate of more than 25 wells per month. BPI had also reached an agreement to expand the compressor station to the extent necessary to process all of the increased production resulting from the additional (more than 100) wells.

71. Colt had refused to withdraw its threat to unilaterally terminate the Methane Lease, based on unwarranted accusations of multiple breaches at that point, so BPI

decided to limit its expansion to the Originally Drilled Acreage and the New Acreage, rather than venture out into the Leasehold and construct an entirely new gathering system. BPI could thereby mitigate the risk that it would lose an even greater investment if Colt, having put BPI on notice under Section 18 that it was in "clear and material" breach of the Methane Lease, suddenly declared the Lease terminated.

72. In early November 2005, but effective as of October 31, 2005, BPI and Colt entered into a tolling agreement, which tolled the running of the 30-day time period for termination of the Lease under Section 18, based on Colt's allegations of breach, in order to maintain the status quo while BPI and Colt met to discuss and negotiate BPI's responses further. The tolling agreement did not alter Colt's declaration that "wells should not be drilled until the appropriate time;" it merely required Colt to provide 17 days' advance written notice if Colt chose to carry out its threat of an early termination of the Methane Lease.

73. On November 22, 2005, BPI sent a letter to Colt enclosing a proposed agenda for a meeting scheduled for December 8, 2005, stating: "We want to make it clear that it is our intent to . . . earn and develop all of the acreage covered under our current lease. . . . [W]e have arranged for the necessary resources to proceed. . . . "

74. On December 8, 2005, Colt began the parties' previously scheduled meeting by delivering a letter which informed BPI that "Colt LLC hereby disapproves of all the mapped well locations in Williamson and Franklin Counties" (the "December 8, 2005 Disapproval Letter"). As a consequence, BPI again could not implement its strategy for earning the acreage located in those two counties.

75. Also, by early December, 2005, because Colt had refused BPI's request to execute a ministerial document acknowledging that the New Acreage was part of the Leasehold

(i.e., a "Ratification"), the Illinois Office of Mines and Minerals began refusing to issue BPI any new drilling permits related to that acreage. As a consequence, BPI could not develop new wells there.

76. On December 22, 2005, continuing in its course of conduct to interfere with BPI's efforts to satisfy the conditions in Sections 2 and 6 of the Methane Lease, Colt, acting through an affiliate, demanded that the Illinois Department of Natural Resources revoke two drilling permits that had been previously issued to BPI. These wells were among the wells that were approved by Lessor in April 2005.

77. As a result of Colt's obstructions, including those acts which are described in paragraphs 61-76 above, BPI was prevented from carrying out its strategy of earning the acreage under the Methane Lease and has been unable to satisfy the conditions in Sections 2 and 6 of the Lease relating to well locations and the payment of aggregate royalties. Indeed, by January 31, 2006, BPI had been able to develop only 73 producing wells in the Delta Project, an increase of only 9 since the end of October 2005, at which time BPI had 64 producing wells in the project—an increase of 27 in the three-month period since July 31, 2005.

COUNT I

INJUNCTION PREVENTING TERMINATION OF THE METHANE LEASE AND OBSTRUCTION WITH BPI'S RIGHTS

(Against all Defendants)

78. Paragraphs 1 through 77 are realleged as if fully incorporated herein.

79. Pursuant to Sections 2 and 6 of the Methane Lease, BPI's interest in the Methane Lease will terminate on April 3, 2006 unless it satisfies two conditions relating to payment of aggregate royalties and well locations. As to royalty payments, BPI must pay at least $1.00 per acre but not less than $42,000 in "aggregate royalties." As to well locations, BPI earns

(and is therefore entitled to keep) (a) every 320-acre tract in the Leasehold where BPI has drilled a well capable of producing CBM; and/or (b) the entire tract covered by each abandoned minework in the Leasehold into which a well has been drilled.

80. One, some, or all of the defendants plan to declare the Methane Lease terminated in whole or in part on April 3, 2006. If that happens, BPI's entire investment in the Delta Project is lost.

81. Colt, as agent of AFC and American Premier, or, in the alternative, as a partial assignee, has committed some or more of the following acts which, individually and/or collectively, have obstructed BPI's performance and prevented BPI from satisfying the conditions in Sections 2 and 6 of the Methane Lease, which conditions are necessary to extend the term of the Lease beyond April 3, 2006:

(a) Unilaterally rescinded approval of vertical and horizontal wells throughout the entire Leasehold;

(b) Refused to allow further drilling in the Williamson County Acreage;

(c) Refused to permit any horizontal well drilling;

(d) Filed objections with the Illinois Division of Natural Resources demanding revocation of well permits for certain wells that were previously approved by Lessor;

(e) Refused to execute ministerial documents necessary for BPI to obtain drilling permits for the New Acreage;

(f) Refused to evaluate proposed operating methods, such as fracing, the use of composite casing, and horizontal drilling, in good faith; and

(g) Declared that, for multiple unfounded reasons, BPI is in breach of the Methane Lease.

82. Colt committed one or more of the foregoing acts with the intent of obstructing BPI's right to drill additional CBM wells on the Delta Project, thereby substantially

causing BPI to fail to meet the conditions necessary to earn acreage and extend the Methane Lease beyond the Primary Term.

83. As a result of Colt's wrongful acts, BPI was forced to substantially curtail its drilling operations throughout the Leasehold.

84. As a further result of Colt's wrongful acts, BPI has only been able to earn approximately 20,000 acres of the 50,000-acre Leasehold within the meaning of Sections 2 and 6 of the Methane Lease. This earned acreage is limited to all of the Originally Drilled Acreage, a small portion of the New Acreage, and the land underlying the abandoned mineworks in Saline and Williamson Counties that contain at least one well.

85. Based on the earned acreage, BPI's "aggregate royalty" payment to the Lessor in April 2006, if calculated solely on the basis of the 15% formula set forth in Section 4(a) of the Methane Lease, would likely be an amount less than $42,000, which is the figure set forth in Section 2.

86. But for Colt's obstruction, BPI would have earned all or nearly all of the entire Leasehold and generated enough revenue in the aggregate to make the payments required under Sections 2 and 6 to extend the Methane Lease beyond the Primary Term. BPI should consequently be excused from any requirement to satisfy the conditions in Sections 2 and 6 of the Methane Lease.

87. Pursuant to the terms of the Methane Lease, BPI has the exclusive right to produce CBM indefinitely once it meets the two conditions necessary to extend the Lease beyond the Primary Term.

88. If the Methane Lease is terminated on April 3, 2006, BPI will have lost all of its capital investment in the Delta Project. Additionally, BPI will either be required to plug

the existing wells, or the defendants will receive a windfall from BPI's forfeiture of its capital expenditures.

WHEREFORE, BPI prays that this Court enter a temporary restraining order and/or a preliminary and permanent injunction as follows:

(a) Enjoining Defendants, and those acting in concert with them, from taking any action to terminate the Methane Lease or to terminate any of BPI's rights under that Lease; and

(b) Enjoining Defendants from taking any actions which interfere with BPI's exclusive right to produce CBM under the Methane Lease.

BPI also prays that this Court award BPI its costs of this lawsuit, attorney's fees and such other relief as this Court deems just and proper.

COUNT II

DECLARATORY JUDGMENT AS TO THE "PARTIAL ASSIGNMENTS"

(Against all Defendants)

89. Paragraphs 1 through 88 are realleged as if fully incorporated herein.

90. An actual controversy exists as to whether Lessor's partial assignments of the Methane Lease to Colt and Peabody are valid and binding on BPI.

91. Under Section 25 of the Methane Lease, no transfer or assignment of Lessor's interest in the Methane Lease is binding on BPI unless BPI has been furnished a complete copy of the written transfer or assignment documentation.

92. Lessor's partial assignment to Colt was made subject to the May 24, 2005 Purchase and Sale Agreement. BPI has never received a copy of the May 25, 2005 Purchase and Sale Agreement.

93. Lessor's partial assignment to Peabody was made subject to the June 1, 2005 Purchase and Sale Agreement. BPI has never received a copy of the June 1, 2005 Purchase and Sale Agreement.

94. Because BPI has not been furnished a complete copy of the documentation relating to Lessor's partial assignments to Colt or Peabody, as required by Section 25 of the Methane Lease, BPI is not bound by these partial assignments and they are invalid.

95. As an independent basis to declare the partial assignments invalid and not binding, the manner in which Lessor has divided its interests in the Methane Lease among Colt and Peabody has "enlarg[ed] the obligations or diminish[ed] the rights of [BPI]," in violation of Section 25 of the Methane Lease. For one example, Lessor assigned overlapping coal zones to Colt and Peabody. In certain areas of the Leasehold, BPI's wells will extend through all of these multiple coal zones. Because BPI's obligations under the Methane Lease do not include an obligation to allocate revenue from CBM produced from a single well to each and every zone from which CBM was produced, BPI's obligations have been enlarged and its rights have been diminished, and the Methane Lease is neither valid nor binding on BPI.

96. As another independent basis to declare the partial assignments invalid and not binding, BPI did not consent to Lessor's partial assignment to Colt; nor did BPI consent to Lessor's partial assignment to Peabody. Therefore, BPI is not bound by Lessor's partial assignments to either Colt or Peabody.

WHEREFORE, BPI prays that this Court declare that (a) AFC and American Premier's partial assignments of the Methane Lease to Colt and Peabody were not valid and were not binding on BPI; (b) neither Colt nor Peabody has any interest in the Methane Lease as Lessor; and (c) the only Lessor under the Methane Lease is AFC and American Premier, jointly. BPI also prays that this Court award BPI its costs of this lawsuit, attorney's fees and such other relief as this Court deems just and proper.

COUNT III

DECLARATORY JUDGMENT AS TO CERTAIN PROVISIONS IN THE METHANE LEASE

(Against All Defendants)

97. Paragraphs 1 through 96 are realleged as if fully incorporated herein.

98. An actual controversy exists as to whether, under the terms of the Methane Lease:

(a) BPI is entitled to drill wells at the locations previously disclosed to Lessor in March and April 2005;

(b) BPI is entitled to conduct horizontal drilling on the Leasehold;

(c) BPI is entitled to use composite casing in the wells it drills; and

(d) BPI is entitled to use the fracing methods it desires.

99. BPI contends that it has the right under the Methane Lease to perform the actions noted above; the defendants contend that these actions constitute breaches of the Lease.

WHEREFORE, BPI prays that this Court declare that:

(a) BPI is entitled to drill wells at the locations previously disclosed to Lessor in March and April 2005;

(b) BPI is entitled to conduct horizontal drilling on the Leasehold;

(c) BPI is entitled to use composite casing in the wells it drills; and

(d) BPI is entitled to use the fracing methods it desires.

BPI also prays that this Court award BPI its costs of this lawsuit, attorney's fees and such other relief as this Court deems just and proper.

COUNT IV

BREACH OF CONTRACT

(Against AFC and American Premier)

100. Paragraphs 1 through 99 are realleged as if fully incorporated herein.

101. The Methane Lease is a valid and enforceable contract, and, in addition to the express promises made therein, Lessor has impliedly promised to act in good faith and not to obstruct BPI's rights under the Methane Lease.

102. BPI has performed all of its obligations under the Methane Lease.

103. AFC and American Premier have given Colt express authority to act as their agent in carrying out the Lessor's rights and obligations under the Methane Lease. As such, any and all acts of Colt are attributable to AFC and American Premier, as Lessor.

104. In the alternative, AFC and American Premier have not objected to the authority Colt has asserted under the Methane Lease, despite having knowledge of Colt's assertion of such authority toward BPI. Therefore, Colt has apparent authority to act as agent for Lessor under the Methane Lease, and any and all of Colt's actions are attributable to AFC and American Premier, as Lessor.

105. AFC and American Premier have breached the Methane Lease, as described below.

Rescinded Approval of Vertical and Horizontal Wells

106. Section 14 of the Methane Lease provides that Lessor shall be deemed to have approved the location of a proposed well if no written disapproval is delivered within 20 days after notice of any well location.

107. Prior to Lessor's purported partial assignment to Colt, and within the meaning of Section 14 of the Methane Lease, Lessor approved all of BPI's proposed well

locations in the entire Leasehold, which includes the Williamson County Acreage and the Horizontal Drilling Acreage.

108. In its December 8, 2005 Disapproval Letter and before, Colt, acting on behalf of AFC and American Premier, purported to disapprove of all BPI's proposed wells in these areas, thereby preventing BPI from exercising its rights under the Methane Lease. As a result, BPI has been unable to drill CBM wells in the Williamson County Acreage and the Horizontal Drilling Acreage.

Failure To Execute a Ministerial Document

109. Section 28 of the Methane Lease prohibits Lessor from "unreasonably refus[ing] to execute in a timely manner ministerial documents (such as applications or drilling permits, approvals, or consents), as may be reasonably necessary to give effect to a provision of this Lease."

110. One of the rights conveyed to BPI under the Methane Lease is the exclusive right to produce methane gas in all of Lessor's acreage in Saline, Williamson and Franklin Counties identified as of April 3, 2001 and in the future.

111. In March 2005, BPI identified the New Acreage and informed Lessor that the New Acreage was part of the Leasehold.

112. On July 27, 2005, BPI informed the Office of Mines and Minerals that the New Acreage was part of the Leasehold.

113. The Office of Mines and Minerals initially issued BPI 45 drilling permits for the New Acreage, but then determined that for additional permits to issue the Lessor needed to execute a Ratification, confirming its interest in the New Acreage.

114. AFC and American Premier have refused to execute a Ratification, which qualifies as a ministerial document under Section 28 of the Methane Lease. As a result of its

inability to obtain new permits, BPI has been unable to drill and develop new wells in the New Acreage.

115. Also, absent an executed Ratification by the Lessor, several land owners with surface rights in the New Acreage where BPI has already received permits to drill have refused to negotiate surface rights agreements with BPI.

Other Breaches

116. In addition to the foregoing, AFC and American Premier, acting through Colt, have breached the Methane Lease in the following additional ways:

(a) Demanding a role in operating decisions in violation of Section 5, including but not limited to the disapproval of BPI's fracing methods and its use of composite casing;

(b) Assigning some or all of its interests in the Methane Lease in violation of Section 25 and Illinois law; and

(c) Failing to execute other ministerial documents necessary to evaluate in good faith BPI's proposed operations, all in violation of Section 28.

117. As a result of one or more of the foregoing breaches, BPI has been damaged in an amount to be determined at trial.

WHEREFORE, BPI requests that this Court find that AFC and American Premier have breached the Methane Lease. Accordingly, this Court should enter judgment in favor of BPI, and against AFC and American Premier, in an amount to be determined at trial, plus costs, attorney's fees and such other relief as this Court deems just and proper.

COUNT V

BREACH OF CONTRACT

(In the alternative, against Colt)

118. Paragraphs 1 through 99 are realleged as if fully incorporated herein.

119. In the alternative to Count IV, Lessor's partial assignment of its interest in the Methane Lease to Colt is valid and binding on BPI. Therefore, Colt acquired all of Lessor's rights under the Methane Lease, and assumed all of its obligations.

120. BPI has performed all of its obligations under the Methane Lease.

121. The Methane Lease is a valid and enforceable contract, and, in addition to the express promises made therein, Colt has impliedly promised to act in good faith and not to obstruct BPI's rights under the Methane Lease.

122. Colt has breached the Methane Lease, as described below.

Rescinded Approval of Vertical and Horizontal Wells

123. Section 14 of the Methane Lease provides that Lessor shall be deemed to have approved the location of a proposed well if no written disapproval is delivered within 20 days after notice of any well location.

124. Prior to Lessor's purported partial assignment to Colt, and within the meaning of Section 14 of the Methane Lease, Lessor approved all of BPI's proposed well locations in the entire Leasehold, including the Williamson County Acreage and the Horizontal Drilling Acreage.

125. In its December 8, 2005 Disapproval Letter and before, Colt purported to disapprove of all of BPI's proposed wells in these areas, thereby preventing BPI from exercising its rights under the Methane Lease. As a result, BPI has been unable to drill CBM wells in the Williamson County Acreage and the Horizontal Drilling Acreage.

Failure to Execute a Ministerial Document

126. Section 28 of the Methane Lease prohibits Lessor from "unreasonably refus[ing] to execute in a timely manner ministerial documents (such as applications or drilling permits, approvals, or consents), as may be reasonably necessary to give effect to a provision of this Lease."

127. One of the rights conveyed to BPI under the Methane Lease is the exclusive right to produce methane gas in all of Lessor's acreage in Saline, Williamson and Franklin Counties identified as of April 3, 2001 and in the future.

128. In March 2005, BPI identified the New Acreage and informed Lessor that the New Acreage was part of the Leasehold.

129. On July 27, 2005, BPI informed the Office of Mines and Minerals that the New Acreage was part of the Leasehold.

130. The Office of Mines and Minerals initially issued BPI 45 drilling permits for the New Acreage, but then determined that for additional permits to issue the Lessor needed to execute a Ratification, confirming its interest in the New Acreage.

131. Colt has refused to execute a Ratification, which qualifies as a ministerial document under Section 28 of the Methane Lease. As a result of its inability to obtain new permits, BPI has been unable to drill and develop new wells in the New Acreage.

132. Also, absent an executed Ratification by Colt, several land owners with surface rights in the New Acreage where BPI has already received permits to drill have refused to negotiate surface rights agreements with BPI.

Other Breaches

133. In addition to the foregoing, Colt has breached the Methane Lease in the following additional ways:

(a) Demanding a role in operating decisions in violation of Section 5, including but not limited to the disapproval of BPI's fracing methods and its use of composite casing;

(b) Failing to execute other ministerial documents necessary to evaluate in good faith BPI's proposed operations, all in violation of Section 28; and

(c) Disapproving wells in areas where Colt had no interest.

134. As a result of one or more of the foregoing breaches, BPI has been damaged in an amount to be determined at trial.

WHEREFORE, BPI requests that this Court find that Colt has breached the Methane Lease. Accordingly, this Court should enter judgment in favor of BPI, and against Colt, in an amount to be determined at trial, plus costs, attorney's fees and such other relief as this Court deems just and proper.

COUNT VI

TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

(Against Colt)

135. Paragraphs 1 through 117 are realleged as if incorporated fully herein. The Methane Lease is a valid and enforceable contract.

136. Lessor's purported partial assignment of its interest in the Methane Lease to Colt was invalid and not binding on BPI.

137. During all times herein mentioned, Colt was aware that the Methane Lease existed.

138. Colt intentionally and unjustifiably induced Lessor to obstruct BPI's performance under the Methane Lease and/or to breach or terminate the Methane Lease, and this obstruction and/or breach was caused by Colt's inducement.

139. Colt's actions were the proximate cause of injury to BPI in an amount to be determined at trial.

WHEREFORE, BPI requests that this Court find that Colt tortiously interfered with the Methane Lease. Accordingly, this Court should enter judgment in favor of BPI, and against Colt, for compensatory and punitive damages in an amount to be determined at trial, plus costs, attorney's fees and such other relief as this Court deems just and proper.

Dated: March 15, 2006

Respectfully submitted,

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